IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

Crl.Rev.Pet.No. 326 of 2007()

CRA.156/2006 of III ADDL.SESSIONS COURT, KOLLAM
CC.1315/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

SHEEJA, VIGNESWAR (PONNARA),
VH-XLI-295,
MUNDAKKAL WEST, KOLLAM

BY ADV. SRI.B.S.SIVAJI

RESPONDENTS: RESPONDENT/RESPONDENTS/COMPLAINANT & STATE

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1. S.KRISHNAN,
SARAS, PANDALACKAL,
NEAR MAANNADA, THEKKEVILA.P.O.,
KOLLAM.

2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
KOCHI.

BY P.P. SRI. C.KAMAPPU.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.R.P.NO. 326 OF 2007

Dated this the 22nd day of January, 2007

ORDER

This revision petition is directed against a concurrent verdict of guilty, conviction and sentence in a prosecution under Sec.138 of the N.I. Act.

2. The cheque is for an amount of Rs.50,000/-. It bears the date 16/1/02. The complainant had examined himself as P.W.1 and proved Exts.P1 to P6. The accused did not adduce any defence evidence. No reply was given to the notice of demand, though duly received and acknowledged.

3. The courts below came to the conclusion that the complainant has succeeded in establishing all the ingredients of the offence punishable under Sec.138 of the N.I. Act. Accordingly, the courts below proceeded to pass the impugned concurrent judgments.

4. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner

does not strain to assail the verdict of guilty, conviction and sentence on merits. I reckon that as an informed and fair stand taken by the learned counsel for the petitioner. It is not necessary to advert to the facts in any greater detail in the absence of any contention. Suffice it to say that I am satisfied that the verdict of guilty and conviction are absolutely justified.

5. Coming to the question of sentence, the petitioner now faces a sentence of simple imprisonment for a period of six months and to pay the actual cheque amount of Rs.50,000/- as compensation and in default to undergo simple imprisonment for a period of two months. I have already adverted to the principles governing imposition of sentence in a prosecution under Sec.138 of the N.I. Act in the decision reported in **Anilkumar v. Shammy** (2002 (3) K.L.T. 852). I am not satisfied that there are any compelling circumstances available in this case which would justify the imposition of any deterrent substantive sentence of imprisonment on the petitioner. Leniency can be shown on the question of sentence. But at the same time the courts cannot ignore the plight of the respondent/complainant who has been compelled to fight two

rounds of legal battle and wait from 16/1/02 for the redressal of his grievance. An appropriate direction for payment of compensation coupled with a lenient substantive sentence of imprisonment shall meet the ends of justice, I am satisfied. The challenge in this revision petition can succeed only to the above extent.

6. In the nature of the relief which I propose to grant, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent/complainant in this revision petition.

7. In the result:

(a) This Criminal Revision Petition is allowed in part.

(b) The impugned verdict of guilty and conviction of the petitioner under Sec.138 of the N.I. Act are upheld.

(c) But the sentence imposed is modified and reduced. In supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed under Sec.357(3) of the Cr.P.C. to pay an amount of Rs.65,000/- as compensation and in default, to undergo simple imprisonment for a period of three months. If realised, the compensation amount shall be released to the

respondent/complainant.

8. The petitioner shall appear before the learned Magistrate on or before 22/3/07 to serve the modified sentence. The sentence shall not be executed till that date. If the petitioner does not appear as directed, the learned Magistrate shall thereafter take steps to execute the modified sentence.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge